

**Dissenting Views
to
H.R. 218, the “Law Enforcement Officers Safety Act”**

While we strongly agree with the dissenting views submitted by Chairman Sensenbrenner (except for the implication that the Second Amendment to the US Constitution confers an individual right to keep and bear arms), we offer this additional set of dissenting views to expand upon the many flaws inherent in HR 218, the “Law Enforcement Officers Safety Act.”

This legislation is a serious step in the wrong direction. It will undermine the safety of our communities and the safety of police officers by broadly overriding state and local gun-safety laws. It will also nullify the ability of police departments to enforce rules and policies on when and how their own officers can carry firearms. Because of the substantial danger that H.R. 218 poses to police officers and communities, it is vigorously opposed by the International Association of Chiefs of Police, the Police Executive Research Forum, and the U.S. Conference of Mayors.

**A. H.R. 218's Sweeping Override of State and Local
Gun Safety Laws is Unprecedented and Unwarranted.**

There is no precedent for what the supporters of H.R. 218 intend to accomplish. Congress has never passed a law giving current and former state and local employees the right to carry weapons in violation of controlling state and local laws. Congress has never passed a law interfering with the ability of state and local police chiefs to regulate their own officers’ carrying of firearms.

Every year, thousands of our fellow citizens are killed by guns. The rate of firearm deaths among children is nearly twelve times higher in the United States than in other industrial countries. These deaths are senseless, and we all know that the vast majority of them could be prevented by sensible gun laws. It is shameful that we are not doing more in Congress to achieve gun safety and reduce gun violence. The “gun show loophole,” which allows firearms to be purchased illegally at gun shows, should have been closed long ago, and there are many other steps that Congress should take to protect our citizens from the scourge of gun violence.

At the very least, Congress should refrain from interfering with gun-safety laws enacted by states and local governments. Today, each state has the authority to decide what kind of concealed-carry law, if any, best fits the needs of its communities. Each state can make its own judgment about whether private citizens should be allowed to

carry concealed weapons, and whether on-duty, off-duty, or retired police officers should be included or exempted in any prohibition.

There is no evidence that states or local governments have failed to consider the interests and needs of law enforcement officers. Consider, for example, New Jersey law. In 1995, retired police chief John Deventer was shot and killed while heroically trying to stop a robbery. This incident prompted New Jersey to enact a law allowing retired officers to carry handguns under a number of conditions. In drafting this law, the New Jersey legislature made a deliberate effort to balance the safety of police officers with the safety of the public at large, by including a number of important safeguards that are not contained in H.R. 218. For example:

- New Jersey's law is limited to handguns. H.R. 218 is not.
- New Jersey's law has a maximum age – 70. H.R. 218 does not.
- Under New Jersey's law, retired police officers must file renewal applications yearly. There is no application process under H.R. 218.
- New Jersey's law requires retirees to list all their guns. No such record is required under H.R. 218.
- New Jersey gives police departments discretion to deny permits to retirees. No such discretion is provided under H.R. 218.

By enacting H.R. 218, Congress will be gutting all of the safeguards contained in the New Jersey statute – as well as the judgment of other states that have considered this issue.

The sponsors of H.R. 218 have presented no evidence that states and local governments are unable or unwilling to decide these important issues for themselves. They have offered no explanation why Congress is better suited than states, cities, and towns to decide how to best protect police officers, schoolchildren, church-goers, and other members of their communities. Congress should bolster, not undermine, the efforts of states and local governments to protect their citizens from gun violence.

H.R. 218 will override most “safe harbor” laws at the state level. It will override laws that categorically prohibit guns in churches and other houses of worship, since only laws that permit private entities to post signs prohibiting concealed firearms on their property will remain in force. In most states, churches are not currently required to post signs in order to have a gun-free zone. H.R. 218 will also override laws that prohibit concealed weapons in places where alcohol is served. Surely, it is reasonable for a state to prohibit people from bringing guns into bars, to prevent the extreme danger that results when liquor and firearms are together.

At the local level, H.R. 218 inexplicably overrides all gun-safety laws, without exception. In the 1990's, Boston, New York, and other cities made great strides in the fight against crime precisely because they were able to pass laws that addressed the factors that lead to violence – including the prevalence of firearms in inner cities. As Congressman Henry Hyde has said, “the best decisions on fighting crime are made at the local level.” By overriding all local gun-safety laws, H.R. 218 will undermine the ability of cities to fight crime. The bill will indiscriminately abrogate “safe harbor” laws in Boston, New York City, Cincinnati, Columbus, Chicago, Kansas City, and many other cities and towns.

B. H.R. 218 Will Undermine the Safety of Our Communities and the Safety of Police Officers.

Some argue that H.R. 218 is needed because the “complex patchwork of Federal, state and local” concealed-carry laws prevents officers from protecting themselves and their families from “vindictive” criminals. Supporters of this bill have distributed two lists of officers and prison guards who were killed while off-duty or in retirement. The stories of these slain men and women are tragic, and their killers deserve to be severely punished. But none of these incidents involved officers who were killed outside their home state. They do not demonstrate a need for a federal override of state and local gun-safety laws. To the contrary, as New Jersey’s response to the tragic shooting of Chief Deventer shows, states and local governments are best equipped to implement policies, regulations, and laws that protect the safety of their own law enforcement officers, and also protect the public at large.

The supporters of H.R. 218 also argue that by authorizing officers to carry guns across state lines, in violation of whatever state and local gun-safety laws would otherwise apply, they will be able to effectively respond to crimes and terrorist attacks. As the majority argues, the bill will enable “law enforcement officers nationwide to be armed and prepared when they answer that call, no matter where, when, or in what form it comes.” The Committee apparently envisages a nation-wide unregulated police force, consisting of retired officers and off-duty officers who are armed while on vacation or traveling outside their home jurisdictions.

This bill is no way for the federal government to support state and local law enforcement. Congress should be providing full funding for first responders employed by state and local governments; communications gear and other law enforcement technology; and specific assistance programs such as the COPS Universal Hiring Program, the Byrne Grant program, and the Local Law Enforcement Block Grant program. Congress should also enact needed gun-safety measures to protect the safety and security of all Americans.

We should strengthen Brady Law criminal background checks for gun purchases, close the “gun show loophole,” reauthorize the assault weapons ban, and amend federal law to ensure that all “cop killer” bullets are banned.

H.R. 218 stands in stark contract to such needed gun-safety legislation. Allowing off-duty or retired officers with concealed weapons to go into other jurisdictions will only make conditions more dangerous for police officers and civilians. As the Executive Director of the IACP explained in a letter dated February 12, 2003:

One of the reasons that this legislation is especially troubling to our nation’s law enforcement executives is that it could in fact threaten the safety of police officers by creating tragic situations where officers from other jurisdictions are wounded or killed by the local officers. Police departments throughout the nation train their officers to respond as a team to dangerous situations. This teamwork requires months of training to develop and provides the officers with an understanding of how their coworkers will respond when faced with different situations. Injecting an armed, unknown officer, who has received different training and is operating under different assumptions, can turn an already dangerous situation deadly.

H.R. 218 neither promotes consistent training policies among different police jurisdictions nor limits the conditions under which officers may use their firearms. The idea that more crimes will be prevented when more concealed weapons are carried by untrained and unregulated out-of-state, off-duty, and retired officers is pure fiction.

However, we do know that it will expose many officers to increased risks and danger. In a June 15, 2004, hearing before the Crime subcommittee, Rep. Scott submitted for the record dozens of reports on instances where, even in the same jurisdiction, off-duty, plain clothes law enforcement officers have shot other off-duty officers , or gotten shot by them or uniform officers, in gun battles where the plain clothes officers were mistaken as criminals. If off-duty officers in the same jurisdiction who engage themselves in law enforcement activities are being shot by their fellow officers, encouraging out of state officers to join in such activities through a federal law will certainly only add to this problem.

It is important to note that in giving off-duty and retired police officers broad authority to nullify state and local gun-safety laws, H.R. 218 is not limited to the carrying of officers’ authorized weapons. In most police departments, officers may seek authorization to carry a range of weapons. If an officer wants to carry a weapon other than his service weapon (typically, a nine-millimeter semi-automatic pistol), he must

prove that he is qualified before the department will authorize him to carry it. To become qualified, the officer must demonstrate that he can handle that weapon safely.

Rather than limiting its provisions to authorized weapons, the initial version of this bill provided that as long as an officer received authorization to carry a particular kind of firearm (such as his service weapon), he could carry concealed *any other* kind of firearm while off-duty or retired – even if he never received authorization from his own police department to carry that other weapon. Because the term “firearm” is defined very broadly under federal law, *see* 18 U.S.C. § 921(a)(3), as long as an officer was authorized to use his service weapon on the job, the initial version of this bill would have allowed him to carry a concealed bomb or grenade while off-duty or in retirement.

Serious safety problems are also raised by the bill’s override of gun-safety laws for retired officers, a category that is defined to include anyone who has served in a law enforcement capacity for fifteen years “in the aggregate” before retiring or resigning and taking a different job. There is no requirement under H.R. 218 that a retiree demonstrate a special need for a firearm. While H.R. 218 provides that an officer must have technically left law enforcement in “good standing,” it is well known that sub-par government employees are routinely released from their positions without a formal finding of misconduct. The bill does not draw a distinction between officers who served ably and those who did not. Officers who retire in “good standing” while under investigation for domestic violence, racial profiling, excessive force, or substance abuse could still qualify for broad concealed-carry authority for the remainder of their lives. As the International Association of Chiefs of Police has observed:

This legislation fails to take into account those officers who have retired under threat of disciplinary action or dismissal for emotional problems that did not rise to the level of “mental instability.” Officers who retire or quit just prior to a disciplinary or competency hearing may still be eligible for benefits and appear to have left the agency in good standing. Even a police officer who retires with exceptional skills today may be stricken with an illness or other problem that makes him or her unfit to carry a concealed weapon, but they will not be overseen by a police management structure that identifies such problems in current officers.

C. H.R. 218 Will Undermine Discipline and Control within Police Departments.

Perhaps the most troubling aspect of H.R. 218 is its potential to undermine the effective and safe functioning of police departments throughout the nation. The bill

removes the ability of police departments to enforce rules and policies on when and how their *own* officers can carry firearms. Police chiefs will lose the authority to prohibit their own officers from carrying certain weapons on-duty or off-duty.

Section 2 of the bill provides that regardless of “any other provision of the law of any State or any political subdivision thereof,” any individual who qualifies as a law enforcement officer and who carries photo identification will be authorized to carry any firearm. In a variety of contexts, including the federal preemption of state law, courts have interpreted the term “law” to include agency rules and regulations. The Supreme Court has ruled that this term specifically includes contractual obligations between employers and employees, such as work rules, policies, and practices promulgated by state and local police departments. See *Norfolk & Western Ry. Co. v. Am. Train Dispatchers’ Assoc.*, 499 U.S. 117 (1991).

As discussed in Section B, above, there is no requirement in H.R. 218 that active-duty officers be authorized to carry each firearm that they wish to carry concealed. All that subsection (c)(2) requires is that an officer be authorized to carry “a firearm.” Pursuant to subsection (c)(4), the officer need only satisfy the agency’s standards with respect to “a firearm.” In other words, once an officer qualifies to carry a service weapon, he will have the right under this bill to carry *any* gun, on-duty or off-duty – even if doing so violates his own police department’s rules.

Thus, if Congress enacts this legislation, police chiefs will be stripped of their authority to tell their own officers, for example, that they cannot bring guns into bars while off-duty; that they cannot carry their service weapons on vacation; or that they cannot carry certain shotguns, rifles, or handguns on the job.

As the International Association of Chiefs of Police stated in a letter to the Committee, “under the provisions of H.R. 218, police chiefs and local governments would lose the authority to regulate what type of firearms the officers *they employ* can carry even while they are *on duty*.”

As a result, the legislation would effectively eliminate the ability of a police department to establish rules restricting the ability of officers to carry only department-authorized firearms while *on duty*. The prospect of officers carrying unauthorized firearms while on duty is very troubling to the IACP for several reasons.

First, an unauthorized weapon is unlikely to meet departmental standards. This in turn means that the officer will not have received approved departmental training in its use, and will not have qualified with

the weapon under departmental regulations. Carrying an unauthorized weapon thus presents a risk of injury to the officer, fellow officers, and citizens, for the weapon itself may be unsafe or otherwise unsuitable for police use, and the officer may not be sufficiently proficient with its use to avoid adverse consequences.

In addition to the risk of injury involved, the carrying of unauthorized weapons is a major source of police civil liability in the U.S. today. An officer who fires an unauthorized weapon in the line of duty risks civil liability for the officer and for the department, even though the shooting may have been otherwise legally justified. A number of civil-suit plaintiffs have contended that the mere fact that the weapon that caused the plaintiff's injury was unauthorized is, in itself, sufficient legal grounds for a finding of liability.

For these and other reasons, the IACP concluded that H.R. 218 "has the potential to significantly and negatively impact the safety of our communities and our officers."

Law enforcement executives face extremely difficult challenges today. As crime rates have started to rise again and new concerns about domestic security have emerged, police chiefs are forced to do more with less. The weak economy has forced cities and states to cut back on funding for law enforcement. The Administration's budget proposes to eliminate all federal funding for such critical programs as the COPS Universal Hiring Program, the Byrne Grant program, and the Local Law Enforcement Block Grant program. The last thing Congress should do now is pass a bill that expands the civil liability of police departments and nullifies the ability of police chiefs to regulate their own officers' use of firearms and to maintain discipline.

D. Conclusion

To address many of the aforementioned deficiencies, during the Committee's markup of HR 218 we offered a series of amendments. Among other things, our amendments would have provided the states with a two year time period to 'opt out' of the bill's coverage; prevented HR 218 from preempting the rules, regulations and policies of local police departments; and placed limits on the ability of officers to carry weapons that they hadn't been properly trained to use - namely, semi-automatic assault weapons. Unfortunately, many of our colleagues were unwilling to adopt these modest proposals.

Each state and local government should be allowed to make its own judgment as to when citizens and out-of-state visitors may carry concealed weapons – and whether active

or retired law enforcement officers should be included in or exempted from any prohibition. In the words of the International Association of Chiefs of Police, it is “essential that state and local governments maintain the ability to legislate concealed carry laws that best fit the needs of their communities.”

H.R. 218 will unnecessarily damage the efforts of states and local governments to protect their citizens from gun violence. It will also expose state and local governments to unnecessary liability and nullify the ability of police chiefs to maintain discipline and control within their own departments. For these reasons, we respectfully dissent.

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